

RESOLUTION NO. 2218

A RESOLUTION OF THE KIRKLAND CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO SIGN ON BEHALF OF THE CITY AS CONTRACTING PARTY THAT CERTAIN IAC PROJECT AGREEMENT: MARSHH PARK DEVELOPMENT PROJECT NO. 73-059D, FOR SUBMISSION TO THE IAC FOR ITS CONSIDERATION DURING ITS MEETING SCHEDULED FOR OCTOBER 29 & 30, 1973.

WHEREAS, the Interagency Committee for Outdoor Recreation of the State of Washington has submitted to the city for its signature as contracting party the formal project agreement for IAC Project Marsh Park Development: IAC No. 73-059D, and

WHEREAS, the existing procedure adopted by the IAC is to submit the formal contract to the contracting party for signature prior to the actual consideration for approval of the proposed project and grant, with the following understanding:

"The signed copies of the contract must be returned to the IAC by October 19, 1973, in order to complete your application. Proposed projects that do not have executed contracts will not be submitted to the Committee for funding consideration at the October 29-30 meeting in Spokane.

"If your proposed project is approved for funding assistance, the IAC Administrator will execute the contract on behalf of the IAC on the same day as Committee approval. ... If your proposed project is not approved, the contract will be filed with your application and returned to you at a later date."

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1: The Mayor of the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland as contracting party that certain project agreement contract known and identified as Marsh Park Development: IAC Project No. 73-059D. Copy of said proposed project agreement has been attached to the original of this resolution and by this reference incorporated herein.

Section 2: Pursuant to Section 21 of said project agreement, the liaison officer for the city of Kirkland is hereby designated as David Brink, Director of Parks and Recreation.

PASSED by a majority vote of the Kirkland City Council in regular meeting on the 15th day of October, 1973.

Attest:

Tom J. Johnson
Director of Administration & Finance
(ex officio City Clerk)

Joseph A. ...
Mayor

4. Terms of Contract. This Contract shall be in effect for the period from _____, 19____ until _____, 19____.

5. Project Assisted. The outdoor recreation project to be assisted is the one set out in the Contracting Party's Application to the Interagency Committee, dated January 15, 1973, as approved for funding by the Interagency Committee at its meeting on the _____ day of _____, 19____. For identification purposes it is entitled Marsh Park Development and briefly described as follows:

This project consists of the acquisition (by donation) of 85 acres fronting on Lake Washington and the development of a passive outdoor recreation facility on the donated and adjacent properties (totalling 3.53 acres). The development will include the following units of work and elements as contained in the original site development plan and cost estimate.

Unless otherwise agreed to in writing by the Administrator, the project shall be carried out according to the plans and proposals submitted by the Contracting Party in, or in connection with, its application for assistance for the project.

- Site preparation
- utilities
- irrigation (automatic)
- landscaping
- paved parking area (9 units)
- paths (874 ft.)
- hand railings
- restroom (masonry const., approx. 400 sq. ft.)
- benches (wooden, concrete)
- area lighting (11 standards)
- deck (8' X 75')
- retaining wall and steps
- sales tax
- engineering and planning

The legal description of the property acquired by donation is attached as Exhibit "A" (page 9) to this agreement.

6. Funding of Project. (a) The total cost of the project covered by this Contract is \$ \$161,650*.

(b) The Interagency Committee agrees to pay \$ _____ or _____ percent of the total project cost, whichever amount is less, from monies available in the Outdoor Recreation Account of the State General Fund.

(c) In addition, the Interagency Committee agrees to recommend to the Bureau of Outdoor Recreation, United States Department of Interior, that federal matching funds in the amount of \$ _____ or _____ percent of the estimated cost, whichever amount is less, be approved for this project, and the Interagency Committee agrees to pay to the Contracting Party any federal matching money made available to the State of Washington for the outdoor recreation project covered by this Contract.

7. Contingencies. The duty of the Interagency Committee to approve disbursement of funds pursuant to this Contract is contingent upon strict compliance by the Contracting Party with the terms of this Contract.

*The development costs total \$81,500. Acquisition donation for local share contribution is \$80,150. Local agency agrees to supply labor at no cost to IAC on the following items: Clearing, topsoil, water lines, sewer lines, landscaping, hand railings.

The duty of the State of Washington to disburse funds is contingent on the funds being available in the Outdoor Recreation Account of the State General Fund.

8. Requirements of Bureau of Outdoor Recreation. If application has been made to the Bureau of Outdoor Recreation, United States Department of Interior, for assistance from the United States Land and Water Conservation Fund (see paragraph 6 (c)) then a copy of Attachment 1 to Form BOR 8-92, Land and Water Conservation Fund Project Agreement, General Provisions, is attached to this contract and marked "Attachment A". If United States Land and Water Conservation Fund money is made available for this project, the Interagency Committee will be required to sign an agreement with the Bureau of Outdoor Recreation and the State of Washington and the recipient public body will be bound by the attached provisions. Therefore, if Land and Water Conservation Fund money is involved in this project, then the Contracting Party agrees to faithfully comply with all the requirements of Attachment A.

9. Project Performance. The Contracting Party shall execute and complete the approved project in accordance with the time schedule set forth in the project application. Unless a different schedule appears in the application or in this contract, the contractor's performance shall commence not later than sixty days after the date this contract has been signed by the Administrator. Unless otherwise agreed in writing, the Contracting Party's performance shall be completed by the end of the period covered by this contract.

10. Project Administration. (a) The Contracting Party shall promptly submit such reports as the Administrator of the Interagency Committee may request.

(b) Property and facilities acquired or developed pursuant to this contract shall be available for inspection by the Administrator upon request.

(c) The Contracting Party shall submit a final report when the project is completed or prematurely terminated, or project assistance is terminated. The report shall include a final accounting of all expenditures and a description of the work accomplished. If the project is not completed, the report shall contain an estimate of the percentage of completion, and shall indicate the degree of usefulness of the completed project, if not previously reported. The report shall contain a final accounting summarizing all expenditures not previously reported and shall include an overall summary for the entire project.

11. Project Termination. All obligations of the Interagency Committee under this contract may be suspended or canceled, at the option of the Interagency Committee, if any of the following has occurred:

(a) The Contracting Party has failed to make satisfactory progress to complete the project, or will be unable to complete the project, or any portion of it.

(b) The Contracting Party is failing to make satisfactory progress to complete any other project assisted with funds from the Outdoor Recreation Account of the State General Fund, or will be unable to complete another such project, or any portion of it.

(c) The Contracting Party has made misrepresentation in its application or in any other information furnished to the Interagency Committee in connection with this project.

12. Remedies. Because the benefit to be derived from the full compliance with the terms of this contract is the preservation, protection, and the net increase in the quantity and quality of public outdoor recreation facilities and resources which are available to the people of the state and of the United States, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished under the terms of this contract, the Contracting Party agrees that repayment of an amount equal to the amount of assistance extended under this contract by the state of Washington would be inadequate compensation for any failure to comply with the terms of this agreement. The Contracting Party agrees, therefore, that in the event of a breach of this agreement by it, specific performance shall be an appropriate remedy.

13. Restriction on Conversion of Facility to Other Uses. The Contracting Party shall not at any time convert any property or facility acquired or developed pursuant to this contract to uses other than those for which state assistance was originally approved without the prior approval of the Interagency Committee, in the manner provided by RCW 43.99.100 for marine recreation land, whether or not the property was acquired with Initiative 215 funds.

14. Use and Maintenance of Assisted Facility. The Contracting Party shall operate and maintain, or cause to be operated and maintained, the property or facilities which are the subject matter of this contract as follows:

(a) The property or facilities shall be maintained so as to appear attractive and inviting to the public.

(b) Sanitation and sanitary facilities shall be maintained in accordance with applicable state and local public health standards.

(c) The property or facilities shall be kept reasonably safe for public use.

(d) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration that would discourage public use.

(e) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

(f) The property or facility shall be open for the use of all segments of the public without restriction because of the race, creed, color, sex, religion, national origin or residence of the user.

15. Reporting. Once a year, the Contracting Party shall certify to the Administrator that the project and all assisted facilities are being retained, operated, maintained, and used in accordance with the terms of this contract. A report and certification will be partially prepared by the Interagency Committee and will be sent to the Contracting Party for completion. The Contracting Party shall also report on specific matters whenever requested to do so by the Administrator.

16. No Waiver by Interagency Committee. The Contracting Party agrees that failure by the Interagency Committee to insist upon the strict performance of any provision of this project contract or to exercise any right based upon a breach thereof, or acceptance by it of performance during such breach, shall not constitute a waiver of any of its rights under this project contract.

17. Identifying Markers. The Interagency Committee reserves the right to display, during the period covered by this contract and after project completion, appropriate signs or markers identifying the roles of the state and federal agencies participating financially in this project.

18. Disbursement of Assistance. Disbursement of the grant-in-aid shall be made in accordance with WAC 286-24-040, after the Contracting Party has furnished the Administrator such information as he shall deem necessary to show compliance with applicable statutes and rules and this contract.

19. Provisions Applying Only to Acquisition Projects. The following provisions shall be in force if the project covered by this contract is for the acquisition of outdoor recreation land or facilities, but shall not apply when the project is for development only:

(a) Evidence of Land Value. Prior to disbursement of the assistance provided for in this contract, the Contracting Party shall supply evidence establishing to the satisfaction of the Administrator that the land acquisition cost represents a fair and reasonable price for the land in question.

(b) Evidence of Title. The Contracting Party shall be responsible for providing satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this contract. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this contract.

(c) Deed of Right To Use Land For Public Recreation Purposes. The Contracting Party agrees to execute an instrument or instruments which contain (1) a legal description of the property acquired under this Project Contract; (2) a conveyance to the State of Washington of the right to use the described real property forever for outdoor recreation purposes, and (3) a restriction on conversion of use of the land in the manner provided in RCW 43.99.100, whether or not the real property covered by the deed is marine recreation land. RCW 43.99.100 reads as follows:

"Marine recreation land with respect to which money has been expended under RCW 43.99.080 shall not, without the approval of the committee, be converted to uses other than those for which such expenditure was originally approved. The committee shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location."

20. Provisions Applying Only to Development Projects. The following provisions shall be in force if the project covered by this contract is for development of outdoor recreation land or facilities, but shall not apply when the project is for acquisition only:

(a) Compliance with the Law. The Contracting Party shall comply with all laws and regulations applicable to the development project and to contracts for work done to carry it out.

(b) Compliance with Application. Unless otherwise agreed to in writing by the Administrator, the project shall be carried out according to the plans and proposals submitted by the Contracting Party in, or in connection with, its application for assistance for the project.

(c) Installment Payments. Assistance provided by this contract for development may be remitted to the Contracting Party in installments, after receipt of billings, and upon satisfactory proof of completion of each stage of construction or development. Determination of appropriate stages for installment payments shall be made by the Administrator, after consultation with the Contracting Party and with the approval of the Bureau of Outdoor Recreation, if United States Land and Water Conservation Funds are involved. Installment payments shall in no event be made more frequently than monthly. An amount equal to 10% of the funding assistance provided the Contracting Party by this contract for eligible development costs may be withheld until final inspection and certification of project completion is made by the Interagency Committee and approved by the Bureau of Outdoor Recreation.

(d) Contracts for Construction. Contracts for construction shall be awarded through a process of competitive bidding if required by state law. No contract required to be let after competitive bidding shall be awarded until approved by the Administrator. Copies of all bids and contracts awarded shall be retained for inspection by the Administrator upon request. Where all bids are substantially in excess of project estimates, the Administrator may, by notice in writing, suspend the project and refer the matter to the Interagency Committee for determination of appropriate action, which may include termination of assistance for development of the project.

(e) Change Orders. Any change orders shall be in writing and shall be made a part of the project file and kept available for inspection or audit upon request.

(f) Nondiscrimination Clauses. Except where a non-discrimination clause required by the United States is used, the Contracting Party shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the Contractor agrees as follows:

- "(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- "(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- "(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The Contractor will include the provisions of the foregoing paragraphs in every sub-contract exceeding \$5,000, so that such provisions will be binding upon each such subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Interagency Committee may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Washington to enter into such litigation to protect its interests."

21. Notices. All notices, demands, requests, consents, approvals, and other communications which may or are required to be given by either party to the other under this contract shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

(a) Notice to the State
Administrator

To: Interagency Committee for Outdoor Recreation
4800 Capitol Blvd.
Tumwater, Washington 98504

or at such address as the Interagency Committee shall have furnished to the Contracting Party in writing.

(b) Notice to the Contracting Party

To David Brink, who serves in the capacity of Parks Director for the Contracting Party, and who has been designated as the Contracting Party's liason officer for the purposes of this contract, or to such other officer or address as the Contracting Party shall have furnished to the Administrator in writing.

22. Additional Provisions, or Modifications of Standard Provisions.